

Open Meetings Act



Purpose

- ▣ The Illinois Open Meetings Act ensures government transparency by requiring that the deliberations and actions of public bodies are conducted openly and are accessible to the public.

What is a Public Body?

- ▣ The Open Meetings Act applies to all public bodies including:
 - State Boards and Commissions
 - Municipalities
 - Counties
 - Townships
 - School Districts
 - All subcommittees of the foregoing bodies

Examples of Groups that are not Public Bodies

Private Companies

Not for Profit Organizations

Homeowners Associations

Individual Officers and Employees

Definition of Meeting

- 1) any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or any other contemporaneous interactive communication,
- 2) of a majority of a quorum of the members of a public body
- 3) held for the purposes of discussing public business.

“Majority of a Quorum”

- ▣ intends to reach the smallest number of members of a public body able to control action when a quorum is present

Board Number	Quorum	Maj. of a Quorum
13	7	4
11	6	4
9	5	3
7	4	3
5	3	3
3	2	2

“Gathering”

- ▣ includes in-person, telephone, and electronic communications
 - If email is extensive enough that it amounts to a discussion between a majority of a quorum of a public body it can be a sufficient “gathering” to constitute a meeting, including forwarding or copying other members opinions in emails to other members
 - *Public Access Bureau advises: Avoid “mass” or group-wide, e-mail exchanges between members*

“Discussing Public Business”

- ▣ refers to an exchange of views and ideas among public body members, on any item germane to the affairs of their public body (not casual remarks)

Electronic Attendance

- ▣ If the public body has adopted rules allowing for electronic attendance, then a member may attend a meeting electronically if the absence is because of
 - A family emergency
 - An employment related matter
 - Sickness

Note: A quorum must be otherwise physically present at the meeting for electronic attendance to occur.

Social Gatherings

- ▣ Purely social gatherings are not subject to the Act
- ▣ However, according to the AG, “If a dinner party turns into a deliberative discussion of public business upon which the attention of the requisite number of public body members present is focused, the gathering becomes a ‘meeting’ for purposes of the Act.”

Hypothetical

While serving as a member of your five-member local park district board, you have become friends with several other board members who share your interests. You and two other board members routinely meet for Zumba sessions at a local gym. On the morning of an anticipated controversial meeting, the three of you get together during Zumba and discuss how you think you may vote on the controversial matter.

Have you violated OMA?

- A. No, because a quorum of the board was not present
- B. No, because the music at Zumba is loud and no one can discuss matters seriously when they are dancing, and members of the public are allowed to attend the Zumba class
- c. Yes, because there was a gathering of a majority of a quorum of the board at which the business of the board was discussed, and the public had no notice or opportunity to attend

Tips for Social Gatherings

- ▣ Beware of the appearance of impropriety
- ▣ Strive to go beyond the minimum requirement of OMA
- ▣ If it doesn't seem right, don't do it

Public Comment and Recording

- ▣ The public is granted the right to comment at open meetings, but the public body may create a reasonable policy to accommodate public comment.
- ▣ Members of the public are allowed to record meetings, but the public body may create reasonable rules relating to the recording of meetings by the public.

Notice

- ▣ Proper notice of meetings must be given
 - Regular meetings need 48 hours notice
 - Special meetings need 48 hours notice
 - Emergency meetings need notice as soon as possible

Notice

- ▣ Public notice of the meeting must be posted at the principal office of the body holding the meeting.
- ▣ Notice must also be placed on the public body's website if the public body has full-time staff to maintain the website.

Agenda

- ▣ Agenda gives the public notice as to the issues
- ▣ The agenda must be specific as to any final action that will be taken at the meeting
 - New law requires that the agenda set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting
- ▣ The agenda must be continuously available for the 48 hours leading up to the meeting
- ▣ A public body may discuss matters that are not on the agenda

Meeting Minutes

- ▣ Public bodies must keep minutes of both open and closed sessions
- ▣ Minutes must include:
 - The date, time, and place of the meeting
 - A summary of discussion of all matters proposed, deliberated or decided
 - The names of all members present and absent and
 - A record of any votes taken

Note: additional rules apply to closed session minutes

Executive Sessions

- ▣ Executive Sessions allow for a meeting to be closed pursuant to certain OMA exceptions. These exceptions include:
 1. Employment/ Appointment – hiring, firing, salary
 2. Legal – Pending litigation, settlement of cases
 3. Business – real estate
 4. Security/ Criminal – security procedures, investigations
 5. School Matters – student disciplinary cases
 6. Miscellaneous Exceptions to the Act – discussion of minutes of meetings lawfully closed

Note: The exceptions are to be strictly construed

Procedure for Entering Closed Session

- ▣ Start in open session
- ▣ Take a vote to close the session
- ▣ State the specific statutory exception that allows the body to go into closed session
- ▣ Exclude the public and enter the closed meeting
- ▣ Vote to adjourn closed session and return to open session
- ▣ Call back to order and vote on any matters discussed
- ▣ No final action may be taken in closed session

Minutes for Closed Session

- ▣ A verbatim recording of the closed session must occur
 - The closed session must be taped
- ▣ Minutes must be generated for closed session
- ▣ Minutes are available for public inspection only if the public body chooses or is ordered to disclose by the court
- ▣ Minutes must be reviewed at least twice a year to determine whether the need for confidentiality still exists

Attorney General Training Requirements

- ▣ On January 1, 2012 new amendments to the Open Meetings Act (5 ILCS 120/1) went into effect which require that ALL ELECTED and APPOINTED members of public bodies complete online training.

Training Requirements

- ▣ Any person who becomes elected or appointed as a member of a public body subject to OMA must complete the electronic training no later than the 0-th day after the member
 - Takes the oath of office; or
 - Otherwise assumes the responsibilities as a member of the public body, if no oath is required

Note: Once training has been completed the member must file the certificate of completion with the public body

IMRF Posting Requirements

Employers participating in the Illinois Municipal Retirement Fund must:

1. Post on their websites the “total compensation package” for each employee making over \$75,000 per year within 6 business days of approving their budget and
2. Post on their website at least 6 days before approval an employee’s “total compensation package” that is equal to or in excess of \$150,000

OMA Violations

- ▣ Criminal Penalties
- ▣ Civil Remedies
- ▣ Public Access Counselor Request for Review

ETHICS

PUBLIC OFFICER PROHIBITED ACTIVITIES ACT

STATE OFFICIALS AND EMPLOYEES ETHICS ACT

Public Officer Prohibited Activities Act

- ▣ Codified at 50 ILCS 105/3
- ▣ Prohibits an office holder from being financially interested (directly or indirectly) in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote
- ▣ Act applies to elected and appointed public officials

CONSEQUENCES OF VIOLATION

- ▣ Criminal Penalties for the Individual Office Holder
- ▣ Class 4 Felony Offense – punishable by a term of imprisonment of 1-3 years in IDOC
- ▣ Civil Consequences for the Public Body
- ▣ Any contract made and procured in violation of the Act is void

EXAMPLE OF VIOLATIONS OF THE ACT- CRIMINAL RAMIFICATIONS

- ▣ *People v. Scharlau*, 141 Ill. 2d 180 (1991)
- ▣ Elected commissioners of the City of Danville and their corporate counsel were indicted and convicted for Official Misconduct and violation of the Corrupt Practices Act
- ▣ The defendants had settled federal law suit involving a claim of violating minority voters' rights
- ▣ The settlement terms, in part, altered the municipal government from a mayor-commissioner system to a mayor-alderman system, but also guaranteed that the defendants would be appointed to newly created 'department head' positions for three years at a fixed salary

The *Scharlau* case

- ▣ Court noted with approval the appellate court's statement that the legislative intent of the Corrupt Practices Act was to codify "sweeping prohibitions against public officials [] engaging in conduct which divides their loyalty between their personal interests and their fiduciary duties." 141 Ill. 2d at 192.

Scharlau (continued)

- ▣ Defense argued that the federal settlement agreement was not a “contract” such that the Act was inapplicable
- ▣ Supreme Court applied a broad common law definition of contract as “an agreement which creates an obligation” and found that the consent decree memorializing the terms of settlement between the parties was a contract

Fiduciary duty to the public body

- ▣ Supreme Court found that the Danville defendants had a duty to refrain from using their positions for personal benefit, and that their arranging for their own employment for a fixed term and salary was outside of their lawful authority
- ▣ “Public officials are expected to adhere to the highest standards of ethical conduct”
- ▣ 141 Ill. 2d 197

CIVIL RAMIFICATIONS

- ▣ *Miller v. County of Lake, et. al.*, 79 Ill. 2d 481 (1980)
- ▣ Miller was a member of the Lake County Board who owned between 1% and 2% of the capital stock of the Wheeling Trust & Savings Bank and served as one of its directors; he also served as president of a subsidiary of the bank
- ▣ Miller participated in board votes designating the bank as the approved depository for the funds under the county treasurer's control
- ▣ He voted against amendments to remove the bank as an approved depository
- ▣ No mention was made of Miller's interest in the bank during the board proceedings, but he had listed his interest in the bank in his disclosure statement filed with the Clerk
- ▣ The bank had been used as an approved depository for Lake County funds for years before Miller was elected

Miller case (continued)

- ▣ Court noted that “competent individuals owning insignificant amount of stock in business entities could well be deterred from public service by the possibility that their mere presence upon a county board or city council might expose them to the possibility of prosecution.” 79 Ill. 2d 481

Miller case (continued)

- ▣ County Board member's conduct violated the Act, and thus, the contracts of deposit were void
- ▣ No intentional wrongdoing or bad-faith dealing had to be shown
- ▣ County was entitled to an accounting for profits earned by the bank on the void contracts of deposit
- ▣ County would be permitted to pursue recovery of benefits that had been acquired by bank

Requisite conditions for an exemption under the act

- ▣ The public official has less than a 1 % share in the ownership AND
- ▣ The public official publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract AND
- ▣ The public official abstains from voting on the award of the contract AND
- ▣ Contract is approved by a majority vote of the governing body

Cont...

- A. Public Official has less than a 7.5% share in the ownership AND
 - B. Official publicly discloses the nature and extent of his interest prior to or during deliberations AND
 - C. Official abstains from voting on the award of the contract AND
 - D. Contract is approved by the majority of those members presently holding office AND
 - E. The Contract is awarded after sealed bids to the lowest responsible bidder if contract exceeds \$1,500 AND
 - F. The award of the contract must not cause the aggregate amount of all such contracts awarded to the same person, firm, association, or partnership in the same fiscal year to exceed \$25,000
- ▣ However, if the aggregate amount in the same fiscal year does not exceed \$4,000 and the amount of a given contract does not exceed \$2,000, there is no restriction on the percentage of ownership interest in the contracting agency and there is no sealed bid requirement
 - ▣ Exemption exists for public officers who own an interest of 1% or less through a mutual fund or exchange-traded fund, in a company, and the company's stock is traded on a nationally recognized securities market

STATE OFFICIALS AND EMPLOYEES ETHICS ACT

- ▣ Mandates that governmental entities must adopt an ordinance or resolution that regulates the political activities of officers and employees of the entity and regulates the accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity
- ▣ Ordinance can be more restrictive, but not less restrictive, than state law

REGULATES PROHIBITED POLITICAL ACTIVITY

- ▣ Sets forth prohibited political activities
 - Do not engage in prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off)
 - Do not use government property for political activities (*i.e.*, phones, computers, fax machines)
 - Government employee shall not be required to participate in political activity in consideration for being awarded additional compensation (*i.e.* bonus or comp time)

Prohibited political activity examples

- ▣ Organizing or participating in any political meeting, political rally, or political event
- ▣ Soliciting campaign contributions for any fundraiser or political event
- ▣ Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question
- ▣ Preparing, circulating or filing any nominating petition on behalf of a candidate or for or against any referendum question

GIFT BAN REGULATIONS

- Do not solicit or receive any gift from any prohibited source
- Ban applies to and includes the spouse of public official and immediate family members living with the public official.

PROHIBITED SOURCE

- ✖ Prohibited source is a: 1) person or entity who is seeking official action by the public official OR 2) does business or seeks to do business with the public official OR 3) conducts activities regulated by the public official OR 4) has interests that may be substantially affected by the performance or non-performance of the official duties of the public official OR 5) is an agent of, a spouse of, or an immediate family member who is living with a prohibited source

EXCEPTIONS

- ▣ A number of exceptions exist, including, but not limited to:
- ▣ contributions lawfully made under the election code
- ▣ Gifts from relatives
- ▣ Any item or items from any one prohibited source during any calendar year having a cumulative value of less than \$100

CRIMINAL PENALTIES

Prohibited Political Activities Violation is a Class A Misdemeanor Offense

Gift Ban Violation is a Business Offense
(fine of between \$1,000 and \$5,000)